

United States Postal Service and Latrisa Joy Mannion. Cases 27-CA-8127-P and 27-CA-8318-P

24 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 23 November 1983 Administrative Law Judge Harold A. Kennedy issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Grand Junction, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Discriminatorily reprimanding employees for leaving their work stations."

2. Insert the following as paragraph 1(c).

"(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discriminatorily reprimand our employees for leaving their work stations.

WE WILL NOT suspend, or otherwise discriminate against, employees for filing charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Latrisa Joy Mannion whole for any loss she may have suffered as a result of her January 1983 suspension, with interest.

WE WILL expunge and remove from our files and records any reference to the January 1983 suspension issued to Latrisa Joy Mannion.

UNITED STATES POSTAL SERVICE

DECISION

INTRODUCTION

HAROLD A. KENNEDY, Administrative Law Judge. These cases are before me pursuant to an order of the Regional Director for Region 27 of the National Labor Relations Board consolidating two cases which allege violation of the National Labor Relations Act by the Respondent, United States Postal Service (Postal Service or Service). Latrisa Joy Mannion (Mannion), an employee of the Service at its Grand Junction, Colorado Post Office, is the Charging Party in both cases. Mannion filed the charges in Case 27-CA-8127-P on October 28, 1982, and the charge in Case 27-CA-8318-P on March 24, 1983. She alleged violation of her *Weingarten* rights by Respondent in both charge cases. She complained of a suspension issued in July 1982 (not challenged in the complaint) and other alleged violations.

A consolidated complaint was issued on May 4, 1983, by the Regional Director for Region 27 alleging violation of Section 8(a)(1), (3), and (4). By answer filed on May 20, 1983, Respondent admitted jurisdiction and other allegations but denied violating the Act as alleged in paragraphs VI through XV.¹ The allegations of the consolidated complaint were tried before me on July 19 and 20 in Grand Junction, Colorado.

STATEMENT OF THE CASE

Charging Party Mannion, an employee of the Grand Junction, Colorado Post Office, was involved in an accident on July 1, 1982, while driving her car on a rural route.² She reported the accident immediately and a Postal Service official, T. J. Carrico, went to the scene, as did her husband (a clerk also employed by Respondent), and a Colorado state patrol officer. She was given a citation alleging careless driving and was later found guilty by a state court (which finding, however, was on appeal at the time of the trial herein).³ The Postal Serv-

¹ Previously, on December 21, 1982, the Regional Director had issued a complaint in Case 21-CA-8127-P alleging violation of Sec. 8(a)(1), but it was superseded on issuance of the consolidated complaint.

² All dates refer to 1982 unless otherwise stated.

³ Mannion said she was also cited for failing to show proof of insurance but the patrol officer did not indicate he charged her with such violation.

ice issued Mannion a 14-day suspension, but it was later reduced to a 10-day suspension.

On December 24, when roads in the Grand Junction area were covered with snow and ice, Mannion's car slid into a "paper box" (presumably a box used for delivery of newspapers) after making a stop on her rural route. There was no damage to her car or the box (although a nail was pushed back in by hand), and she immediately informed a member of the family which owned the box. On December 27 Postal Official Carrico, who investigated the July 1 accident, learned of the December 24 incident and confronted Mannion, seeking to question her about not reporting the incident as being an "accident" reportable under Postal Service rules and regulations. Mannion became upset and requested a representative and then sick leave. She was allowed to go home on administrative leave with her husband (who was not working that day), but there was discussion between her husband and the postal official as the Mannions left the Post Office. Reference was made during such discussion to the charge filed by Mannion (in Case 27-CA-8127-P) with the NLRB.

On the morning of the following day, December 28, Postal Official Carrico again sought to discuss the December 24 incident with Mannion. Later that same morning Mannion went to the office where Carrico was working, bringing along with her another employee as a witness, to obtain the telephone number of a representative. Carrico ordered Mannion and her fellow employee to return to their work stations on the basis they had no permission to leave their work area.

Later, on December 29, Carrico did hold an investigative interview with Mannion and a union representative at which time Mannion completed accident forms and answered questions. On January 6, 1983, she was notified that the Postal Service was removing her from the Service and that she was to leave the building. She was later reinstated without backpay and returned to work on May 12, 1983.

The General Counsel contends that the *Weingarten* rights of Mannion were violated by Postal Official Carrico on July 1 when he investigated Mannion's accident of that date and again in late December when he undertook to investigate the December 24 incident. The January 6, 1983 suspension also allegedly violated the Act.

The consolidated complaint specifically alleges:

a. About December 27, Respondent, acting by and through Carrico, stated it was "chicken shit" of an employee to file charges with the National Labor Relations Board (par. VI(a)).

b. About December 29, Respondent, acting by and through Carrico, reprimanded an employee for leaving the employee's work station when she asked her supervisor for the telephone number of a union steward located in a different city (par. VI(b)).

c. About July 1 and December 27, Respondent, acting by and through Carrico, denied the request of its employee, Mannion, to be represented by the Union during an interview which said employee had reasonable cause to believe would result in disciplinary action; said interviews were conducted, notwithstanding the denial of

such employee's requests for representation (pars. VII and VIII).

d. About January 6, 1983, Respondent suspended Mannion and has since failed and refused to reinstate her because of her "membership in and activities on behalf of the Union, and because she filed charges under the Act" (pars. IX and X).

The acts described in paragraphs (a), (b), and (c) above are alleged to constitute violations of Section 8(a)(1). The conduct described in paragraph (d) is alleged to constitute violations of Section 8(a)(1), (3), and (4).

It is undisputed that the Postal Service reinstated Mannion in the spring of 1983 without backpay and that she returned to work on May 12, 1983. Thus, with respect to the 1983 suspension, it is necessary only to determine whether such suspension was contrary to the Act. As indicated above, the Postal Service admits jurisdiction (asserted pursuant to Sec. 1209 of the Postal Reorganization Act, 39 U.S. 101 et seq.) and a number of their allegations, including the following:

a. That at all times material the following persons were supervisors and agents as those terms are defined in the Act and held the positions as indicated: Phillip Fessler—supervisor, delivery and collection; Brian S. Cornelius—MSC director, E & LR; and Dan Garrison—postmaster.

b. That at all times material T. J. Carrico is and has been an agent as defined in the Act while holding positions as accident investigator and superintendent, collection and delivery.

c. The Rural Letter Carriers Association, at all times material, is and has been a labor organization within the meaning of the Act.

I. THE EVIDENCE

The 1981-1984 collective-bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association is in evidence as Respondent's Exhibit 12. The grievance and arbitration procedure is set forth in article 15, the discipline procedure is set forth in article 16, and representation procedures are set forth in article 17.

Nine witnesses testified—four for the General Counsel and five for Respondent Postal Service. One of the witnesses, T. J. Carrico, was called by the General Counsel and later testified for Respondent as a defense witness. The General Counsel recalled two of its case-in-chief witnesses, Charging Party Mannion and a fellow employee, Charlotte Roth, to testify on rebuttal.

The testimony of the principal witnesses will be summarized in detail.

Charging Party *Latrisa Joy Mannion* is a rural substitute carrier who usually works in that position 1 day a week. She has held that position since 1978. Since becoming a "senior substitute" she has also been called in to work on other days during the week.⁴

⁴ On cross-examination Mannion explained that she is the "sub of record on Rural Route 4" which "works out of the Grand Junction office and Whitewater office." The Grand Junction Post Office maintains

Continued

Mannion has been active in labor organization, including the American Postal Workers Union (APWU) and its auxiliary (APWUA). She has served as an officer and attended state, regional, and national conventions as a delegate. Mannion said she had lobbied Congress on behalf of the APWU and APWUA. She organized a Solidarity Day for striking city market workers in Grand Junction and picketed on their behalf. Mannion's husband, Timothy (Tim), is also a Service employee and is president of the western Colorado area local of the APWU. She explained on cross-examination that she had dropped out of the Rural Letter Carriers' Association because she had "trouble getting my local steward [Frank Bailey] to represent me."

She testified that she had an accident on Thursday, July 1, 1982, while driving her car on a rural route. She "was coming down CS-2 Road," a dirt road, as it passes through a rural area and saw a dog run in front of her car. She described the event as follows:

I swerved, hit an embankment to avoid going off the other side of the mountain or hitting the dog. The next thing I remember is being outside my car looking at the damage. Then I tried to get back into my car and my car was locked, and the next thing I remember after that is being up the road to the last box I had just delivered, taking the mail out of the mailbox instead of putting it in

Mannion's head hit against the windshield, causing it to break. After she got out of the car, she discovered she had left the keys in the ignition with the engine running. She flagged a motorist who drove her to the Whitewater Post Office where she telephoned the Grand Junction Post Office. She spoke to Gene Letterhos, in the absence of her then supervisor, Phil Fessler, and reported the accident. She asked that her husband, Timothy Mannion, who was at work at the post office in Grand Junction, be told of the accident so he could bring another set of keys for the car to her. Letterhos told Mannion an accident investigator would be sent out.

T. J. Carrico, the "MSC" (Management Sectional Center) accident investigator for the Service in Grand Junction drove to the Whitewater Post Office where Mannion was waiting. (Carrico at the time was also acting branch manager of the Fruitvale Post Office Branch in Grand Junction. Later he was named supervisor of delivery and collection in Grand Junction and became a supervisor of Mannion.) Timothy arrived at the Whitewater Post Office shortly after Carrico, and the three then proceeded in Carrico's car to the accident scene. Mannion said she felt weak and dizzy while waiting at the Whitewater Post Office and told Myrna Roy, the Postmaster at the Whitewater Post Office, "several times" that her head was "hurt really bad."

Mannion indicated she was feeling worse when she returned to the accident scene. She said she could not recall that Carrico ever inquired about her condition.

a branch office known as Fruitvale. She stated that as a senior substitute, a status she said she had held for about a year and a half, she carries auxiliary Route 11 out of Fruitvale "five days a week unless I get called back into this office to carry Rural Route 4."

Her neck was getting stiff, she had trouble seeing, and she felt sick to her stomach.

Carrico got out of his car on arriving at the accident scene and began taking pictures and measurements. Mannion asked Carrico if she might receive a 2-week suspension as another postal employee (Charlotte Roth) had, and he responded: "Probably at least a letter of warning."

Mannion testified that her husband then offered the opinion to Carrico that she needed a union representative, but Carrico "kind of ignored" the remark. Timothy Mannion repeated the comment, saying, "Ted, she needs union representation if there's going to be disciplinary action." Carrico's response, according to Mannion, was:

You're here by my good graces and if you don't like it, you can shut up and walk home.

State Patrol Officer Tom Wulf arrived at the accident scene shortly after the three Service employees did. Mannion said Wulf and Carrico exchanged pleasantries ("about their families, their cats, their dogs") and was "shocked" to know that Carrico was acquainted with the officer. Carrico and Wulf together examined the car tracks on the road and "compromised" on which were made by Mannion's car. Wulf asked all three of the Service employees to get in his patrol car, with Mannion being directed to sit in front with him. Wulf began asking questions of Mannion, such as the speed of her car and the position of the dog. Wulf became "upset" at her answers, she said.⁵ According to Mannion, Wulf asked Carrico to get out of the car when Mannion expressed concern that Carrico could use her answers against her. Officer Wulf also requested Mannion's husband to get out of the car while she undertook to write out a statement. According to Mannion, Wulf told her he would charge her with reckless driving unless she explained in clear detail what had happened. Wulf would not allow her husband to help in preparing a statement, and the patrolman declined her husband's offer to look for dog tracks.

Wulf rejected Mannion's first written statement but accepted it after she "added a little more to it." Wulf told Mannion he would talk to her "supervisor," referring to Carrico, about issuing her a ticket. Thereafter Wulf issued a citation which alleged careless driving and failure to show proof of insurance.

Whitewater Postmaster Roy came to the accident scene and offered to finish up Mannion's route, but Carrico rejected the offer, saying: "No it's her route; she'll finish it." With the help of her husband, who drove her car, Mannion finished the route—involving the delivery of mail to about 10 boxes. Mannion then went to the Grand Junction Post Office to "case the mail" for the carrier who would be working on the following day. She said she "couldn't see the case right" and was sorting the mail incorrectly. At the suggestion of her husband, she

⁵ Mannion said she explained she did not know the speed of her car as she sat on the right side while delivering mail. The officer then "had us drive up and down the road until I could tell him about how fast I was going, and he took that," Mannion said.

left the Post Office with permission of her supervisor and, after picking up her children, went to the emergency room of the St. Mary's Hospital.⁶

Mannion stated that the hospital performed a "full scan, x-rays, head examination" and observed her for 3 hours. She was given medication and instructed to go to bed. The hospital record (G.C. Exh. 4) stated, in part: "Impression is that of head injury with mild concussion and probable cervical strain."

Mannion said she went to the Post Office on July 16 "on my own time" to fill out an accident report for Carrico. Her supervisor, Phil Fessler, told her at the time, she said, that there should be no disciplinary action for the accident.⁷ When she next reported for work on July 13, her next "normal work date," she saw a note on her case advising her to see her acting supervisor Russ Cogburn. When she reported to Cogburn, she received a letter dated July 8 (G.C. Exh. 5) that stated that she was being given a 14-day suspension. She said she signed the letter as requested by Cogburn who, she said, told her, "Ted [Carrico] told me to do it."

Mannion said she grieved the 14-day suspension herself and met with Carrico at step 1. He ultimately offered her "a letter of warning," but she thought a "6 month letter" was more appropriate. She requested that her "state steward," Frank Jordan, appeal the matter to the next step. While attending a labor convention away from home, the grievance was settled by Jordan with a 10-day suspension—a "complete shock" to her, she said.⁸

December 23 was the next date Mannion referred to in her testimony. On that date she said she mentioned to Carrico that a complaint had issued on the (first) charge she had filed with the NLRB, suggesting that he "take it like a man" and not personally. On the following day, December 24, another incident occurred while delivering mail on the rural route that gave rise to further problems between Mannion and Carrico. Snow and ice were on the road that day, she said. Her car "got stopped" at 265-32-1/2 Road and was "slipping" as she tried to pull away after making a delivery at a box. A Mr. Kirkpatrick, who lived nearby, came to her aid. As she let up on the accelerator her car slid back in to a newspaper box that belonged to a Mr. Kellerby, postmaster of Whitney, Colorado. Mannion got out of her car and observed that a nail had come loose in Kellerby's newspaper box, but Kirkpatrick "pounded" it back by hand. Kirkpatrick assured Mannion that there was no damage to her car or the newspaper box and told her: "Go on. Don't worry. It's slick out and be careful." Mannion said she explained that she would have "to tell Mr. Kellerby that this happened," and did so. Mrs. Kellerby, according to Mannion, responded: "Fine, don't worry about it, Merry

Christmas . . . have a nice day."⁹ Mannion finished her route and returned to the Post Office. She said no other person was there at the time and she went home.

Mannion reported for work on the following Monday, December 27, and saw Carrico around midmorning. Quoting from Mannion's direct examination:

About 10:30 Mr. Carrico walked up and he had a clipboard, it looked like a camera, a bunch of pencils, and everything in his hand, and he says, "Trisa, did you have an accident?" I said, "No." He says, "Are you sure you didn't have an accident?" I said, "No, Ted, I didn't have an accident." I said, "If you're going to talk to me about this, I think I need a union representative." Ted was acting very strange at the time.¹⁰

Mannion said Carrico was "aggressive" and repeated his inquiry. He asked if she had a "minor accident." She denied that she had a minor accident and indicated a desire to have a representative "now" if he were going to pursue the inquiry.¹¹ Carrico continued:

He said, "Okay." He said, "I know you had an accident. Dan and I have talked about it, and we've decided it's a removal. It's an automatic removal to leave the scene of an accident." And he walked off.¹²

Mannion said the incident made her shake visibly, and she was advised by coworkers that she was too upset to carry a route. She decided that they were correct and asked Carrico for permission to go home on sick leave. He refused, Mannion said, but told her to go to the

⁹ A letter allegedly written by Mrs. Kellerby concerning the incident was rejected as hearsay.

¹⁰ Later on cross-examination, Mannion stated that on the morning of Monday, December 27, Carrico "had been taking pictures of my car and got the estimate." She identified on direct examination a letter dated February 8, 1983, which she had obtained from a Grand Junction automobile dealer. The letter, received as G.C. Exh. 7, reads in pertinent part:

On December 28, 1982, Mr. & Mrs. Mannion brought in their 1979 Pontiac to have some parts installed that were on order from a previous repair.

It was at that time, Mr. & Mrs. Mannion asked us to look over the right side of their car for any other damage. We looked it over and found no other damage of any kind on the right side of their car. At that same time there was some items to be replaced from a previous visit.

Mannion estimated the cost of repair of her automobile for damage resulting from the July 1982 accident to be around \$600.

¹¹ Mannion said she wanted a union representative, not an EEO representative as the Postal Service had contended. Her affidavit stated that she requested "anything and everything [Carrico] had relating to this incident and requested the EEOC number."

¹² Mannion maintained on cross-examination that on December 27 Carrico sought to question her without a union representative present. She agreed that she told Carrico at that time that she had hit a newspaper box but added that there was no damage to her car or to the box. She said she told Carrico at that time that she wanted Frank Jordan, who was at the time in Pueblo, Colorado, to act as a union steward. She agreed during cross-examination that Frank Bailey, a local steward, could have been in the building at the time, but that she did not want him as a representative as she had filed charges against him (and Frank Jordan as well) with the NLRB. On redirect Mannion said on that Monday she "didn't care" who represented her. She did not name any particular person; she "wanted a union representative." She indicated she did not know where Frank Bailey was at the time: "He was out on his route or not even there. I don't know where he was."

⁶ Mannion recalled that she could not recall the name of a longtime friend whom she saw that day at the babysitter's or the name of her friend's child.

⁷ Fessler later testified that he did not recall making such remark.

⁸ Carrico later corroborated Mannion's testimony concerning this grievance. He said his notes indicated that he met with Mannion alone on July 26 at step 1. Mannion indicated she would accept a letter of warning if it remained in her file for only 6 months. Carrico told her he said that the letter must stay in her file for 2 years, the "customary" period.

breakroom, when she told him sick leave could not be refused. He gave her some accident forms to fill out but later told her, apparently before she completed the forms, that she could either go to the doctor or go home on sick leave if she went to the doctor.

Mannion said she and her husband went to the front of the Post Office building to secure an appropriate medical form before leaving. Carrico was there, and Mannion's husband and Carrico had the following exchange:

And at that time Tim said, "I think this is really chicken, Ted." And Ted says, "Yeah, just like those NLRB charges, huh?"¹³

Carrico "ordered us out of the building" at that point, Mannion related, and she and her husband left. Mannion had to return later, before seeing a doctor later in the day because she had been given the wrong medical form to give to the doctor. She saw Carrico again on that occasion and she told Carrico, in response to his inquiry about how she was feeling, that she was en route to the doctor.

Mannion returned to work on the following day, December 28, so the regular carrier could have his day off, even though the doctor had suggested she take the day off. Carrico and Mannion had further discussion on that day. At 8 a.m. Carrico approached Mannion and told her that he and "Dan" needed to meet with her that morning. Mannion responded that she needed a union representative and added, "Ted, I thought you'd learn from the last charges . . ." Carrico became "furious" and walked toward her. Mannion said she was startled and placed a tub between herself and Carrico. Carrico then told her that she should be there on the following morning "with or without a union representative." He then called another employee, Jane Williams, over and asked her to witness the order that he had given to Mannion. He then repeated in a "very loud" voice the following direction: "I'm ordering you to be here at 8:00 a.m. with or without your union representative."

Carrico walked away, but Mannion went to find Carrico shortly in order to obtain the telephone number of her union representative, who she thought was located in Glenwood, Colorado. She took with her a fellow employee and friend, Charlotte Roth, to act as a witness. The two women went to the office of Harry Apple, superintendent of delivery and collection, where Carrico was at the time. The door of the office was open, and Mannion commenced entry as she asked for the telephone number of her "nearest representative." Carrico became irate and furious, she said, and told her that she

had no permission to be there and that she should have knocked. Carrico then told Mannion she was to return to her case and not leave there for the rest of the day for any reason. Roth was also directed to return to her station. Mannion was later told by another supervisor, "Mary Munoz, the 204-B that day" that Carrico had given instructions that Mannion was not to speak to Carrico further that day and to stay at her case.

A 2-1/2 hour meeting attended by Carrico, Mannion, and Larry Garrison, described by Mannion as her "state president from Glenwood," took place on December 29 at the Grand Junction Post Office. Mannion filled out "papers on the accident" and was questioned by Carrico. Mannion recalled that Carrico made the comment that if the incident had involved Jeannie Sant (identified by Mannion as a nonunion employee) "this would have been over in 10 minutes." (On cross-examination, Mannion said she had reached Garrison by telephoning him Tuesday evening, December 28, possibly at his home in Carbondale, Colorado.)

On the afternoon of January 6, 1983, after Mannion had returned from delivering mail on a route, Carrico approached her and stated that he wanted to talk to her. Mannion replied that if it concerned an accident she wanted her union representative present. Carrico told Mannion, she said, that "it's not a disciplinary action" and "stomped off." He returned shortly, however, with a letter (G.C. Exh. 6), and asked that she acknowledge its receipt by signing for it. She read and signed it in his presence and in the presence of his witness Jane Williams. The letter, dated January 5, 1983, bears the caption of "Notice of Proposed Removal," and reads in part as follows:

This is advance written notice that it is proposed to remove you from the Postal Service no sooner than 14 days from the date of your receipt of this letter.

This action is based on the following charge:

Failure to Follow Instructions

Specifically, on Friday, December 24, 1982, you had a vehicle accident at 265 32-1/2 Road. Specific instructions stated that "All accidents, either industrial or vehicle, no matter how minor, must be *immediately* reported to your supervisor. Failure to report an accident immediately may result in disciplinary action." These instructions were issued to all employees on October 7, 1982. You did not follow these instructions.

The Post Office did not learn of the accident until December 27, 1982. On that date when I attempted to verify the incident with you, you initially denied any knowledge of it. Upon continued questioning, you finally admitted the accident but refused any further questions. You then filled out a CA-1, Notice of Traumatic Injury, and requested medical treatment.

Failure to immediately notify the Postal Service at the scene of an accident impedes proper investigation and raises the possibility of legal action against the Service for damage, loss, and/or injury.

¹³ Mannion acknowledged on cross-examination, again, that it was her husband who initiated the subject of filing charges with the Board on December 27. She said her husband indicated to Carrico that "it was really chicken shit . . . to be harassing" Mannion by "even considering charges" against her. According to Mannion, Carrico responded, just before ordering the two Mannions out of the Post Office building, by stating "with a smile, 'Yeah, that's right. Just like the NLRB charges.'"

Mannion had also stated on direct that she recalled that Carrico had told her prior to the July 1982 accident, when he was involved in the processing of a grievance filed by another employee, Dan Greathouse, that: "People that file grievances cause trouble and make waves and get it right back."

Such flagrant disregard for rules and regulations cannot and will not be tolerated.

In addition, the following elements of your past record have been considered in proposing this action.

1. You were issued a letter of Proposed Removal Action on December 3, 1981 for *Conduct Unbecoming a Postal Employee* while in the performance of Official Duties and *Falsification of an Official Document*. This proposed removal action was later reduced to a 14 calendar day suspension.

2. You were issued a 14 calendar day suspension on July 8, 1982 for *Failure to Operate a Motor Vehicle in a Safe Manner*. The 14 day suspension was later reduced to 10 calendar days.

You have the right to file a grievance under the Grievance & Arbitration Procedures contained in Article XV of the National Rural Letter Carriers' Agreement.¹⁴

On cross-examination Mannion acknowledged that she knew all accidents were to be reported and, accordingly, reported the July 1982 accident. She did not make a report on sliding into the Kellerby newspaper box on December 24 because, she said:

I didn't feel it was an accident. I've hit mailboxes before. The supervisors knew about it, and I was told square it with the customer. It's a common practice. Everybody hits mailboxes.

She identified Don McKelvey, who had retired around 1981, as a supervisor who had told her that it would be sufficient to "square it" with the customer if she were to bump a mailbox.¹⁵ (On redirect she named Charlotte Roth, who later testified, and five other employees who had hit mailboxes without reporting the incidents.) Mannion said she was not aware prior to January 1983 of a notice being on the bulletin board at the Grand Junction Post Office advising that all accidents "no matter how minor" are to be immediately reported to the employee's supervisor.¹⁶ Mannion showed her the notice, she said, "those times."

¹⁴ Mannion was asked on cross-examination concerning conduct that led to a 14-day suspension in December 1981 (handled by herself and settled by her with Carrico without a grievance or any appeal being filed). She explained that the discipline resulted from a "stupid" mistake: she allowed a city carrier to become a passenger in her car for 2 or 3 hours while she was delivering mail. She said she stopped and they talked probably for 45 minutes and that she incorrectly reported a 30-minute lunch break stop instead of one for 45 minutes. She added that the way she had been trained "we normally write 30 even if we stop for 15" minutes. She conceded the error: "Honestly, it's not right. I don't do it anymore, and I won't do it again."

Respondent later offered, through Carrico, a notice of proposed removal action dated December 3, 1981, which asserts that Mannion had indicated a 30-minute lunch period on November 23, 1981, but had actually been parked for approximately 1 hour and 15 minutes that day (R. Exh. 3).

¹⁵ McKelvey later testified that he did not recall making such a statement to Mannion.

¹⁶ The notice, a copy of which was received as R. Exh. 2, is dated October 7, 1982, and was offered later through Carrico.

Timothy "Tim" Mannion, husband of the Charging Party, has been a distribution clerk at the Grand Junction Post Office and an employee there for about 6-1/2 years. He said he had been a shop steward before becoming president of the western Colorado area local of the American Postal Workers Union.

Tim Mannion gave testimony corroborative of Latrisa Mannion's account of events occurring on July 1 and December 27. He stated that his wife called him on July 1 and informed him of her accident and that she had reported it to the Whitewater Postmaster. Mannion's supervisor was not available at the time and Customers Service Director Gene Letterhos was put on the line to give her instructions.

According to Tim Mannion, Mannion asked Carrico at the accident scene whether any discipline could result, and he replied that "at least a letter of warning" was possible. Tim Mannion said he advised Carrico of the need for a union representative on two occasions. Carrico ignored Tim's first statement, but when it was repeated Carrico indicated Timothy could shut up or walk back to town.

Timothy described his wife's condition at the accident scene as "kind of spaced out." He said she complained of a headache and being "sick to her stomach." Later on, when he took her back to the Grand Junction Post Office and, prior to leaving for the hospital, Timothy said she staggered a bit as she walked and "wasn't really coherent."

Timothy stated that the state patrol officer pressed his wife for answers to questions in the presence of Carrico. Finally, the patrol officer told Carrico to get out of the car, but Carrico and the officer conferred thereafter. Carrico caught up with Timothy and his wife as they were finishing up Mannion's route and requested the statement that Mannion had prepared for the patrol officer. Tim indicated that perhaps legal counsel should be sought, whereupon Carrico issued a "direct order: give me the statement right now."

Tim said he received a telephone call from his wife on December 27. He was at home in bed, and Mannion was speaking from the post office with a "shaking" voice. Mannion told him, he said, that Carrico "was giving her a bad time . . . implying that she had another accident and he told her she was going to be fired over this one." Timothy's wife also told him that she was afraid to go out on her route in her condition but that Carrico had denied her sick leave. Timothy went to the breakroom and talked with his wife. He said he told his wife that she should fill out a CA-1 form and "take COP for day." Mannion asked Carrico for the CA-1 form, and Carrico supplied a form (the wrong form, as it turned out, Timothy stated). The following exchanges took place at this juncture. Timothy stated:

I told him when he was getting the form, I said, "Ted, I really can't believe you're doing this." I said, "This whole deal is chicken shit." He turned around and smiled at me and said, "Just like filing charges with the NLRB."

Q. Then what happened?

A. Then my wife asked him, she said, "I'd like any information you have regarding this incident and copies of it and the number to the EEO officer." And he said, "If you're too sick to work, you're too sick to get information." He said, "I want you both out of the building now." So we left.

T. J. "Ted" Carrico was called as a witness by the General Counsel and later by Respondent. Carrico said he was the MSC accident investigator on July 1 when asked by Gene Letterhos, MSC director of customer services, to investigate an accident involving rural route carrier Mannion.¹⁷ At the time, Carrico was also a supervisor of delivery and collection under Harry Apple, as well as acting manager of the Fruitvale Branch of the Grand Junction Post Office.¹⁸ Phil Fessler, another supervisor of delivery and collection, was supervisor of Mannion at the time as Carrico was then assigned to the Fruitvale Branch.

On being given the assignment by Letterhos, Carrico said he left the Fruitvale Branch and proceeded to the main office in Grand Junction to secure a camera and investigation kit. While at the main office he called Mannion at the Whitewater Post Office and, he thought, inquired about her condition as well as the condition of her car. He advised her to telephone the Colorado State Patrol.¹⁹

Carrico said he inquired of Mannion if she were "okay" on arriving at the Whitewater Post Office; also, he said, "I think we talked about the accident" while waiting for Mannion's husband. When Timothy Mannion arrived, the three proceeded to the accident scene, according to Carrico, the Mannions "began filling out accident forms" and Carrico commenced a "standard" investigation—taking pictures and measuring skid marks. Carrico maintained that there was no request for a union steward by either Mr. or Mrs. Mannion prior to the arrival of State Patrol Officer Wulf.

Carrico said he had known Trooper Wulf for many years but did not regard him as a close friend. Wulf took charge of the investigation, Carrico said, but Carrico agreed that he assisted in the investigation, comparing measurements that each had taken. Wulf indicated to Carrico, Carrico said, that Mannion's story did not hold water. Carrico indicated in his testimony that he thought it unlikely that a dog would be in the area which he described as "desert."

Carrico acknowledged that he was present in the state patrol vehicle while Wulf questioned Mannion. Carrico agreed that Mannion was upset and cried during the questioning. He said he "voluntarily" got out of the

patrol car as she expressed fear of disciplinary action. Carrico said he asked Wulf after the interview in the patrol car was over whether any citation was being issued. Wulf told him that two citations were being issued—one for careless driving and another for failing to have proof of insurance.

Carrico stated that he allowed Mannion to finish up her route, using her car, with the help of her husband. She had indicated, he said, that she would be able to do so if accompanied by her husband. The Mannions were able to use her car, he said, even though its windshield and left quarter panel had been damaged.

Carrico identified General Counsel's Exhibit 5, dated July 8, as the letter proposing a 14-day suspension of Mannion in connection with her July 1 accident. A grievance was filed and settled at step 2 (with Mannion being given a 10-day suspension instead of one for 14 days), but, he noted, no grievance was filed alleging denial of a steward on July 1. Carrico said he and Mannion met together at step 1 and were unable to resolve the matter.

Carrico testified that a copy of the notice dated October 7 and received as Respondent's Exhibit 2 has been posted continuously at the Grand Junction main post office since on or about that date. The notice reads:

ALL EMPLOYEES GRAND JUNCTION POST OFFICE

It is the policy of the Grand Junction Post Office to insist that *all* assigned employees observe and comply with *all* safety rules and regulations.

Employees who fail to follow safety rules and regulations, regardless of whether or not an accident occurs, may be subject to disciplinary action up to and including removal from the Postal Service.

All accidents either industrial or vehicle, no matter how minor, must be *immediately* reported to your supervisor. Failure to report an accident *immediately* may result in disciplinary action.

Carrico stated that there were other notices conveying the same message posted at the post office.²⁰

On December 27, a day when he was acting as superintendent of delivery and collection in the absence of Harry Apple, Carrico said he learned that Mannion had another accident. Gary Morton, a postal clerk, reported to him that on Christmas Eve "Mrs. Mannion had slid into a paper box belonging to his father-in-law, Dale Kellerby." Carrico went to the parking lot and inspected Mannion's car. He said he observed that there was some chrome loose on the front fender, "maybe a small scratch or dent where something had been pushed in," and other damage on the left front which he thought "was probably left over from the previous accident." Carrico confronted Mannion at her desk around 10 a.m. and asked if she had had an accident on Christmas Eve. She denied that she

¹⁷ Carrico explained that "MSC" stands for "Management Sectional Center." He said the Management Sectional Center at Grand Junction includes 86 postmasters and that many post offices are all under the supervision of Dan Harrison, MSC manager at Grand Junction. Letterhos reports to Garrison, and Harry Apple, superintendent of delivery and collection, reports to Letterhos.

¹⁸ Carrico said he had worked for the Postal Service in Grand Junction since 1969. He supervised Mannion when she was hired around December 1978. At the time of the hearing, he had been named Postmaster-Elect of the Palisade, Colorado Post Office to become effective on August 15, 1983.

¹⁹ Carrico indicated on cross-examination that he might have called the State Patrol himself.

²⁰ Carrico also referred to the rural carriers' handbook which advises that all accidents, "regardless of the amount of damage, injury or deaths," are to be reported on Form SF 91 before going off duty on the day of the accident (R. Exh. 13).

had, and Carrico inquired about the damage to her car. Mannion replied that the damage resulted from the previous (July) accident and then added that her husband had hit a deer. When Carrico asked whether she had hit a box, Mannion admitted that she had, explaining that there was no damage and that she had spoken to Mrs. Kellerby about the incident. She claimed to be unaware that there was any need to report a minor accident to the Postal Service. It was at this point Carrico thought Mannion asked for a steward. Carrico then summoned another carrier, Dorothy O'Brien, to act as a witness in hearing him advise Mannion that she could call in a lawyer or her steward. Carrico testified, "I think" Frank Bailey was in the building that morning; also "I think I said that Frank Bailey was available." Carrico referred to "source pay document" (R. Exh. 6), which he said indicated Bailey was on duty on December 27, 28, and 29 and was in the building until after 10 a.m. on each of those days. According to Carrico, Mannion then indicated that she would not let Bailey represent her, and Carrico returned to his work in Apple's office. He returned to Mannion's case in about 30 minutes to inquire further about the accident. Carrico indicated some uncertainty about what happened at this point, noting that he had talked with her "so many times." He was not sure whether on this occasion he gave her accident forms to fill out with the help of a steward or whether this was the occasion when she asked for an EEO telephone number and a record of her past accidents. He thought the latter occurred and that Mannion said she was not ready to talk yet. He said he secured for her the EEO number and asked the MSC safety officer to secure the accident information that Mannion had requested.

Carrico said he spoke with Mannion later that day. She had wanted to go home on sick leave instead of making deliveries on her route. Carrico said he put her on administrative leave and advised her to go to the "swing room" while he sought advice from a superior—Gene Letterhos, he thought. Mr. and Mrs. Mannion came to the office shortly thereafter and asked for "an accident log and things like that." He said he told Mannion if she were "too ill" to work she should go home. As the Mannions were leaving, Timothy Mannion made a comment to Carrico—

"Don't you think that's kind of chicken shit," or something to that effect.

Carrico denied making any reply.

Carrico thought he next spoke to Mannion on December 28, the next workday, around 8 a.m. and asked her if she were ready to discuss the accident. She indicated she was not and an uncertainty when she would be. He then told her, in the presence of another carrier, that she was to be in Harry Apple's office on the following morning at 8 o'clock with her representative. Carrico returned to the office and within a few minutes Mannion and Charlotte Roth "barged in to the office, demanding that I put that in writing." Carrico said he thought he did not respond beyond saying he was busy and suggesting that the two women return to the work station. Carrico said

he did not know what he did say "exactly" and conceded that "it wasn't a pleasant conversation."

Carrico stated that on December 29 he met with Mannion and her "state president" steward, Larry Garrison, who had traveled from Carbondale, Colorado, for the event. Carrico said after some discussion Garrison ultimately agreed that an "accident" did occur and directed Mannion to complete the accident form which had been given her.²¹ Carrico said that this was the first time he got "any information about the accident" of December 24 from Mannion and it changed his "belief" about whether there was any damage to her car. He then went to visit Mrs. Kellerby who told him "she was not concerned about the paper box."

Carrico said he had spoken to Postmaster Garrison on December 27—when Carrico "believed" that Mannion's car was damaged by "sliding into the mailbox" on December 24—about the possibility of an accident at Kellerby's. Carrico said he realized on December 29 that his "assumptions" concerning the damage to the front of Mannion's car were incorrect.²² He completed two Postal Service accident forms (R. Exhs. 8 and 9) on December 30 and thereafter prepared and signed the notice of proposed removal dated January 5 (G.C. Exh. 6). The letter was submitted to Postmaster Garrison (through Brian Cornelius, labor relations director) for signature as the "MSC manager must sign off" under the collective-bargaining agreement on the discharge of an employee. Carrico said he handed the January 5 letter to Mannion while she was at work at her case on January 6 and told her she would be in pay status for 2 weeks. She signed for it after indicating she was expecting it. She wanted to finish casing up the mail, but he told her he preferred that she leave the building. Mannion "fooled around," and Carrico walked over to the supervisor of the floor on the clerk's side as he was certain she would contact her husband. She came over to where her husband was working and, seeing "the two of us watching," laid the letter down on the machine in front of him and left.

Carrico said he met with Mannion and Frank Bailey, the local steward for rural carriers, at step 1 in connection with the grievance filed protesting the proposed removal action of January 5. Carrico denied the grievance, and it was again denied at step 2 in a meeting between Bailey and Brian Cornelius. Mannion was later reinstated, according to Carrico, at step 3 without backpay (R. Exh. 11).

Carrico testified that he was aware of only one instance in which a carrier had failed to report an accident. The Service had proposed removing him, but the discipline was reduced (during the grievance procedure) to a 14-day suspension. Carrico identified a summary which lists vehicular accidents involving city and rural

²¹ Carrico said Mannion may have filled out part of the form at some time prior to the meeting.

²² Carrico nevertheless considered Mannion to be at fault for causing an accident on December 24. He said there were approximately 6 inches of snow that day, and she should have had chains on her car.

carriers at the Grand Junction Post Office between July 1981 and May 1983.²³

Carrico acknowledged when asked what constitutes an accident that the term could be "a vague thing." The General Counsel's attorney introduced through Carrico an excerpt from Respondent's "Supervisor's Safety Handbook" which defines "ACCIDENT" as follows (G.C. Exh. 9, sec. 991):

An accident is an event which results from, or is incident to, post operations and results in injury to persons or damage to property regardless of who is injured, ownership of property, cause, severity or location of the accident.

Thomas Wulf, a Colorado state patrol officer since 1969, testified that he went to the scene of Mannion's July 1 accident and spent over an hour investigating the situation. Wulf said Mannion told him that she was not hurt and that he observed no injury.

Wulf said he talked with Mannion while she, her husband, and Carrico were seated in the patrol car. He said Mannion's answer to questions he asked were so unclear and evasive that he told her he had no alternative but to cite her. She commenced to cry and indicated she was afraid to speak in front of Carrico. Carrico then left the vehicle voluntarily before Wulf could request it.

Mannion wrote out a statement, but Wulf found it unacceptable. Another statement was prepared, which was signed by her, and Wulf accepted it. He said he may have given it to Carrico so a copy could be made.

Wulf asserted that at no time in his presence did either Mannion or her husband request a representative to be present.

Wulf said he cited Mannion for careless driving and made an official report on July 3 (R. Exh. 1).²⁴ The case was tried before Mesa County Judge Kilmer and Mannion was found guilty. Wulf said he had learned just before his appearance in this matter that the traffic charge had been appealed.

Charlotte Roth, who is employed at the Grand Junction Post Office as a city carrier and is an officer of the National Association of Letter Carriers, testified on the General Counsel's case-in-chief that she was asked to be a witness—as a friend and not as a union representative—on two occasions on December 28.

On the first occasion Mannion asked Roth to witness the fact that Mannion was turning in a "COP"—a job

injury form—to a supervisor. Marty Munoz, who took the form from Mannion, was an acting supervisor and told Roth she should return to her case as she was not at the time "on Union form 1720" status.

Later Mannion asked Roth to accompany her to see Carrico, who was at the time working in Harry Apple's office with the door open. Mannion walked partially into the office and asked for a steward's telephone number. Carrico "got really upset" and "started yelling" about "barging into his office." Carrico, who was Roth's regular supervisor at the time, sent Roth back to her case. Thereafter, Munoz took Roth aside and told that he had been yelled at by Carrico because she had left her case that day. Munoz also told her, Roth said, that if she ever left her case again without permission her state union president would be advised that she was doing union work unofficially and she would be given a letter of warning. Roth said Carrico told her later in the day, as the two passed each other, that she should not get herself in trouble over Mannion.

According to Roth, the treatment she received by Carrico and Munoz on December 28 represented a change from past practice. She said employees had been free to leave their work stations previously "for a few minutes" without having to secure permission.

On rebuttal Roth testified concerning a 1981 accident she had during her first 90 days of employment by the Postal Service. She said the truck she was driving hit a mailbox and tore it off the pole. She went ahead and finished the route because "the people saw me, so I figured I didn't need to tell them." When she returned to the Post Office the "VOMA"²⁵ officer told her, laughingly: "Next time you hit a mailbox like that, call in." Her supervisor at the time said nothing to her about the accident. Roth said she would handle an accident differently today; she would speak to the customer and report the accident to her supervisor.

Roth said she had been disciplined by the Postal Service on two different occasions. She received a warning for leaving "accountables" on her desk and a 2-week suspension for a rollaway accident.

Myrna Marie Roy testified that she had worked for the Postal Service since 1976 and has been the Postmaster at the Whitewater Post Office since May 1982. She reports to Dan Garrison, the Postmaster at Grand Junction.

Roy testified that on July 1 Mannion came to the Whitewater Post Office in the early afternoon and picked up mail for delivery on her rural route. Mannion returned around 3 p.m. that day and reported having an accident. Roy recalled that Mannion had been crying and had a lump on her temple. Mannion used the telephone, and her husband and Carrico thereafter came to Whitewater and the three then proceeded to the accident scene. Roy closed the Whitewater Post Office at 5 p.m. and proceeded down CS 2 Road. She met the Mannions and then Carrico, who told her that the Mannions would finish the route. Roy returned to her office, as did the Mannions, and they talked briefly.

²³ The summary was prepared in response to a request of the General Counsel's attorney who requested the information in an effort to show that Mannion had been the object of disparate treatment. The summary, received as R. Exh. 14, identifies the names of each employee involved, a description of each accident, and the discipline imposed. Carrico identified Dan Greathouse, a full-time city carrier, as the employee who had been previously disciplined for failing to report an accident. Greathouse had backed into a private party's vehicle around April 1982 and caused "slight" damage to a Service vehicle and to the private party's vehicle. The General Counsel's attorney also obtained information concerning more recent accidents involving Grand Junction Service employees. I am not persuaded, however, that the record shows treatment of Mannion was so disparate as to show unlawful discrimination. See R. Exh. 14, G.C. Exh. 10; also Tr. 284-300; 306-312; and 467-472.

²⁴ Wulf listed certain factors (e.g., visibility, road conditions) as the basis of issuing the citation. He said Carrico obtained a copy of his official report.

²⁵ Carrico stated that VOMA stands for "vehicle operation maintenance assistant."

On a Thursday in January 1983 Mannion told Roy while at the Whitewater Post Office that Mannion would probably be getting some termination papers when she returned downtown to the Grand Junction Post Office. Mannion also stated at that time that "she was going to get even with Ted" if it was the last thing she did. Roy said she then told Mannion that Carrico had "stuck up for her in an earlier incident." More recently, on the Thursday prior to the trial of this matter, Mannion mentioned Carrico again. Mannion referred to the fact that Carrico had been appointed postmaster at Palisade, Colorado, a place where Mannion said he would "sit . . . and rot."

Phillip Fessler, who has worked for the Post Service for over 20 years, testified that in July 1982 he supervised Mannion and prepared (G.C. Exh. 5) the July 8 disciplinary letter issued to her. Fessler said he had previously conferred with Carrico and reviewed Carrico's notes and the Colorado state patrol's report concerning Mannion's July accident. Fessler said he also met with Mannion but did not discuss any discipline with her. He stated that he left town on vacation on the evening of July 8 and left it to Russ Cogburn, who would be working as a 204-B acting supervisor in his absence, "to take care of the rest of the matter."

Fessler said he did not recall telling Mannion that he thought her July accident did not warrant any discipline. Fessler stated that Mannion was working 1 day a week at the time, and he gave her a 14-day suspension so as to impose on her the loss of pay for 2 days.

Donald McKelvey, a retired Postal Service employee, testified that he was the "main supervisor" of Mannion until around January 1981. He said he had a rural letter carriers' manual issued to him and that a manual should have also been at every rural carrier's desk. It was his recollection that all accidents, including minor ones, should be reported. He said, however, "I don't know what you would consider a minor accident." He indicated he would not have told Mannion that it would have been sufficient for her to settle a minor accident, like bending a mailbox post, with a customer without also reporting it to her supervisor. He stated, however, that he did not recall specifically discussing with Mannion the reporting of accidents.

William Daniel "Dan" Harrison identified himself as "Postmaster, Management Sectional Manager, Grand Junction, Colorado." In that position he supervises 84 post offices located in western Colorado.

Harrison said he has been concerned with safety on a "continuing basis" since he was appointed to his present post on July 24, 1982. "Stand-up" safety talks are held weekly, Harrison said. Safety is also a subject of Service newsletter articles. On October 7, 1982, Harrison caused the posting on official bulletin boards copies of Respondent's Exhibit 2, the notice which advises "ALL EMPLOYEES" to report immediately "All accidents, either industrial or vehicle, no matter how minor" Copies of Respondent Exhibit 2 were also mailed to the home of employees of the Postal Service in the Grand Junction area, but Harrison was aware that some did not receive copies by mail.

Garrison learned from Carrico on December 27 that a rural carrier may have had an accident on December 24. Garrison said he told Carrico to pursue the matter. Garrison received an accident report around the end of the month, and about January 5, 1983 signed General Counsel Exhibit 6, the letter addressed to Mannion and proposing her removal. Garrison asserted that it was he who made the decision to terminate Mannion. Garrison testified, however, that the letter was prepared by Carrico and that Garrison signed the letter without making any changes.²⁶ Garrison indicated that the discipline imposed on Mannion was based on her failure to report an accident and the difficulty encountered in getting a report with respect to it, not the accident itself. He said he uses "personal judgment" in assessing discipline, noting that some acts of misconduct (e.g., fighting, stealing) may call for removal even if they are first offenses. Prior discipline of an employee is also taken into account. In Mannion's case he said he took into account the fact that she had been disciplined twice before within the previous 12 months. He thought she had sufficient notice of a duty to report the December accident and that it appeared that she was unwilling to abide by the rules and regulations of the Postal Service.

Garrison identified the step 2 and 3 decisions (R. Exhs. 10 and 11, respectively) which were issued in connection with the grievance filed on Mannion's behalf following the issuance of her January 5, 1983 removal notice letter. Garrison said the undated step 3 letter, which states that Mannion's removal was unwarranted and that she is to be restored to her position without backpay, was received in his office on April 27.

Garrison said he became aware of Mannion's unfair labor charge against the Grand Junction Post Office shortly after it was filed in October 1982. He denied that there was any connection between the charge and the January 5, 1983 removal letter issued to Mannion. Said Garrison: "I do not even recall the thought crossing my mind that this is the person who has filed a NLRB charge."

II. DISCUSSION AND CONCLUSIONS

A. The Weingarten Allegations

In *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), the Supreme Court held that under Section 8(a)(1) of the Act an employee who reasonably believes that an interview will result in disciplinary action has the right, on request, to be accompanied at the interview by a union representative. The complaint in the instant matter alleges that Carrico denied Mannion's request for a union representative on July 1 and again on December 27.

The General Counsel indicates that the denial of *Weingarten* rights in July is more difficult, i.e., "harder," to find than with respect to the December incident. The record satisfies me that Mannion indeed reasonably believed that Carrico's questions on July 1 and in late December could well result in discipline. The difficulty

²⁶ Garrison stated that he discussed Mannion's discipline with certain staff members but was uncertain with whom he spoke or just when.

with the General Counsel's contention with respect to Carrico's investigation of Mannion's accident on July 1 is that Mannion never asked for a union representative. The Supreme Court endorsed the Board's view that the employee must request the presence of a representative and "may forego his guaranteed right and, if he prefers, participate in an interview unaccompanied by his union representative." Although the complaint states that Respondent denied "request of its employee, Mannion," the record clearly shows that Mannion did not make a request for a union representative on July 6.²⁷

The General Counsel's attorney argued at the hearing that I should hold that Mannion's *Weingarten* rights had been invoked "because of her physical and emotional state she was unable to" ask for a representative herself. The General Counsel reiterates the argument in her brief but concedes that she has been "unable to provide a specific case on this rationale."

Mannion's predicament on July 1, when Carrico undertook his investigation, arouses considerable sympathy. Her head was hurting, she was sick to her stomach, and she was dizzy. Carrico had to be aware that her physical condition and mental state had been adversely affected to an extent, and he knew that Mannion's husband wanted a representative present. And patrolman Wulf proceeded on his arrival to question her, pressing her to furnish a statement that was turned over to Carrico. Still, I am unable to find that Mannion was so incapacitated that she did not know that she could request a representative. She had been able to make her way to the Whitewater Post Office after the accident and telephone the main Post Office at Grand Junction for assistance.

Appalachian Power Co., 253 NLRB 931 (1980), cited by Respondent, involved a factual situation somewhat analogous to the investigation that Carrico undertook on July 1. There the Board held that a union steward, who had been summoned by an employee to a superintendent's office, where a disciplinary interview of the employee and another person was to take place, could not invoke the employee's *Weingarten* rights since the employee did not "express a continued concern for union representation" by renewing his request or by insisting the steward remain during the interview. The *Appalachian Power* case is a stronger case for representation than Carrico's July 1 investigation.²⁸ Accordingly, I am constrained to find that no *Weingarten* rights of Mannion were violated on July 1.

Nor am I able to find that Carrico denied Mannion's *Weingarten* rights on December 27. The record indicates

that Carrico confronted Mannion that morning and sought to question her about having an accident on December 24. She told Mannion that she had no accident on December 24. I am persuaded that Carrico stopped questioning her on December 27 when she advised him that she wanted a representative present.

Carrico interviewed Mannion on December 29 with a union steward present and was able to obtain the information he wanted from her. No violation of *Weingarten* rights occurred on that date or is alleged to have resulted from such interview.

Thus, it was not established that Mannion's *Weingarten* rights were denied by the Postal Service on either July 1 or December 27, 1982, and, therefore, the allegations of paragraphs VII and VIII will be dismissed.

B. Other 8(a)(1) Allegations

The "chicken shit" statement which the complaint avers as emanating from Carrico was not made by him expressly. Both Mannions testified that Timothy Mannion on December 27 made a statement to the effect that it was "chicken shit" for Carrico to be bothering the Charging Party about a possible accident on December 24 and that Carrico responded, in effect, yes, "just like" her going to the NLRB.²⁹ Carrico testified that Timothy made the "chicken shit" statement but denied that he made any response himself. I credit Mannion's testimony that Carrico responded as the Mannions testified.

Carrico could certainly respond the way Mannion claimed he did—at most only conveying the thought that Timothy Mannion had stated in express terms in initiating the conversation—without violating the Act. Such a statement by Carrico under the circumstances hardly could be considered a threat or coercive in any way. Paragraph VI(a) will be dismissed.³⁰

Carrico's reprimand of Mannion about December 29 (actually December 28), for leaving her work station, challenged in paragraph VI (b) of the complaint, was unlawful and will be proscribed. On December 28 Mannion went to see Carrico, who was working that day in Harry Apple's office, to obtain the telephone number of a representative she wanted to be present at an interview on the following morning. The evidence indicates Carrico became quite upset when she entered the doorway without knocking and then reprimanded her for leaving her work station without first securing permission. Carrico then sent Mannion and Charlotte Roth, who had accompanied Mannion, back to their work stations. Carrico followed up his reprimand by instructing a temporary supervisor Marty Munoz to inform Mannion to remain at her case and not attempt to speak to Carrico that day.

I am persuaded that in reprimanding Mannion on this occasion Carrico was acting in reprisal because Mannion

²⁷ I credit the testimony of the Mannions that Timothy Mannion requested a union representative on July 1 over that of Carrico, who denied that a request was made by either. The General Counsel's attorney gave consideration to amending the complaint so as to allege that a request was made for Mannion, but the General Counsel's problem with respect to the July 1 investigation was a factual deficiency, not one of pleading.

²⁸ And see *Gulf States Mfg. Inc. v. NLRB*, 704 F.2d 1390 (5th Cir. 1983), citing *Lennox Industries v. NLRB*, 637 F.2d 340 (5th Cir. 1981), cert. denied 452 U.S. 963 (1981). Quoting from the court's opinion in *Lennox*:

As long as one or more company officials are aware of the employee's desire and request for the presence of a union representative, a single request will suffice for the multiple meetings which are part of a "single interrelated episode," as here. [Emphasis added.]

²⁹ It is not absolutely clear what conduct of Carrico that Timothy Mannion regarded as "chicken shit" on December 28. Carrico had sought to question Mannion that day about a possible accident on December 24, but he had also refused to allow her, at least at first, to go home on leave following his attempt to question her. Timothy Mannion, in initiating the conversation, was possibly upset at both actions of Carrico.

³⁰ Carrico's comment was not without significance, however. As indicated, *infra*, it provided insight as to Carrico's motivation in later recommending Mannion's termination.

had declined to be interviewed without a representative present. The reprimand was also discriminatory as the past practice at the Grand Junction Post Office had been, as Roth credibly testified, for employees to be able to leave their work stations for brief periods without express permission of their supervisors. Cf. *Keller Mfg. Co.*, 237 NLRB 721 (1978), modified 106 LRRM 2546 (7th Cir 1980), cited by the General Counsel.

C. Mannion's Suspension

The record persuades me that the charge Mannion filed with the Board in October 1982 motivated Carrico's January 1983 recommendation that she be disciplined for the December 24 incident. I am not persuaded that Mannion's membership in the Union or any of her activities on behalf of any union were in any way involved in the decision to discipline her. I find, therefore, that Respondent violated Section 8(a)(4) in suspending Mannion in January 1983 but not Section 8(a)(3).³¹

I am inclined to agree with the General Counsel's attorney that the December 24 incident did not involve a reportable accident. More to the point, I find she believed reasonably that there was no duty on her part to make a report to the Postal Service of the December 24 incident. An accident does not always occur whenever a vehicle touches another object, and Respondent's notices and regulations do not alter that fact. As previously noted, "accident" is defined in Respondent's own supervisor's safety handbook (G.C. Exh. 9) as follows:

An accident is an event which results from, or is incident to, postal operations and results in injury to persons or damage to property regardless of who is injured, ownership of property, cause, severity or location of the accident.

The December 24 incident, as shown by this record, indicates that there was no accident even under Respondent's rules. There was no injury to any person and no damage to any property, real or personal. Further, no Postal Service customer complained about the incident. Carrico himself indicated that whether an accident has occurred may be difficult to determine in some situations as it can be "really a vague thing."

But whether the December 24 incident involved an accident or not under Respondent's rules and regulations is not dispositive. I am persuaded that in recommending disciplinary action against Mannion in January 1983 Carrico was motivated by the fact that Mannion had filed a charge against him and the Service in October. The record may not show that "a gleam" appeared in Carrico's eyes when he learned of the December 24 incident, as the General Counsel's attorney argues, but it does persuade me that Carrico was desirous of repaying Mannion for the trouble she had caused him, including the filing of her charge against him in October 1982. He was ready to report almost immediately that Carrico's vehicle sustained damage in the December 24 incident; after learning there was none he nevertheless recommended serve

punishment—in the form of termination.³² Postmaster Garrison adopted the recommendation of Carrico without change as his own and made it the decision of the Postal Service. The allegations of paragraphs IX and XIII were sustained.

Based on the foregoing, I make the following

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent.
2. The Rural Letter Carriers Association is a labor organization within the meaning of Section 2(5) of the Act.
3. Through T. J. Carrico, Respondent violated Section 8(a)(1) of the Act by discriminatorily reprimanding Latrisa Joy Mannion for leaving her work station without permission.
4. Respondent suspended Latrisa Joy Mannion in January 1983 for filing a charge with the National Labor Relations Board and thereby violated Section 8(a)(1) and (4) of the Act.
5. No other violation of the Act was established.

REMEDY

Having found that Respondent engaged in unfair labor practices in violation of the Act, I find it necessary to order Respondent to cease and desist therefrom and take specific action designed to effectuate the policies of the Act. I will recommend Respondent be ordered to make Latrisa Joy Mannion whole for any loss of earnings suffered by reason of the discriminatory suspension, with interest. Backpay is to be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950); *Isis Plumbing Co.*, 138 NLRB 716 (1962); and *Florida Steel Corp.*, 231 NLRB 651 (1977). I shall also recommend that Respondent be ordered to expunge from its files and records any reference to any discipline in connection with the December 24, 1982 incident.

On the basis of the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended³³

ORDER

The Respondent, United States Postal Service, Grand Junction, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminatorily reprimanding employees for leaving their work stations or in any like or related manner interfering with, coercing, or restraining employees in the exercise of the rights guaranteed in Section 7 of the Act.

(b) Suspending, or otherwise discriminating against, employees for filing charges with the National Labor Relations Board.

³² Mannion recalled during her direct testimony that on an occasion prior to her July 1982 accident Carrico had indicated to her that employees who file grievances are troublemakers and "get it right back."

³³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³¹ I agree with Respondent that there is no credible evidence of record of any union animus on the part of the Postal Service.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Make Latrisa Joy Mannion whole for any loss incurred by her as a result of her unlawful suspension in January 1983, any backpay to be paid her to be computed in the manner set forth in the remedy section of this decision.

(b) Expunge and physically remove from its files and records the January 1983 suspension issued to Latrisa Joy Mannion and any reference thereto.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Grand Junction Post Office copies of the attached notice marked "Appendix."³⁴ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."